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Supreme Court, U.S.
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No. _____

IN THE
Supreme Court of the United States
October Term, 2007

PETER PAUL MITRANO,
Petitioner,

versus

SUPREME COURT OF THE STATE OF NEW HAMPSHIRE,
Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of the State of New Hampshire

---

PETITION FOR WRIT OF CERTIORARI

Peter Paul Mitrano
Pro se
4912 Oakcrest Drive
Fairfax, Virginia 22030

Petitioner

October 9, 2007

Questions Presented for Review

1. Did the Supreme Court of the State of New Hampshire suspend the law license of petitioner without adequate due process?

2. Is the court rule that the Supreme Court of the State of New Hampshire utilized to suspend the law license of petitioner void for vagueness?

3. Is it a violation of due process for the Supreme Court of the State of New Hampshire to violate the doctrine of judicial notice by relying upon the allegations of a hearing committee in the District of Columbia?

4. Do the actions and inactions of the State of New Hampshire and the District of Columbia related to this matter justify a revolution?

Parties to the Proceeding

The caption of this case in this Supreme Court of the United States contains the name of the petitioner. The members of the Supreme Court of the State of New Hampshire are Chief Justice Broderick, Justice Dalianis, Justice Duggan, Justice Galway and Justice Hicks. Neither party is a parent, subsidiary or affiliate of any company.

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SUPREME COURT OF THE STATE OF NEW HAMPSHIRE,

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---

Peter Paul Mitrano respectfully petitions for a writ of certiorari to review the judgment of the Supreme Court of the State of New Hampshire in this case.

Opinion Below

The Order of the Supreme Court of the State of New Hampshire from which petitioner seeks certiorari appears in the Appendix hereto at page A-1. The subsequent Order issued by the Supreme Court of the State of New Hampshire denying petitioner's motion and/or request for reconsideration appears in the Appendix hereto at A-4. All lower court decisions are unreported.

Jurisdiction

The decision of the Supreme Court of the State of New Hampshire was entered on June 7, 2007. (A-1) A timely motion and/or request for reconsideration was filed and an Order denying the motion and/or request for reconsideration was entered by the Supreme Court of the State of New Hampshire on July 11, 2007. (A-4) This petition for writ of certiorari was filed within ninety days of said date of July 11, 2007. This Court's jurisdiction is invoked under Title 28 United States Code, Section 1257(a).

Statutory Provision Involved

New Hampshire Supreme Court Rule 37(16)(f) states that:

> "(f) The court may suspend attorneys or disbar New Hampshire licensed attorneys or publicly censure attorneys upon such terms and conditions as the court deems necessary for the protection of the public and the preservation of the integrity of the legal profession. The court may remand the matter to the professional conduct committee for such other discipline as the court may deem appropriate."

Statement of the Case

This petition for writ of certiorari arises from New Hampshire Bar Counsel filing an original action against the petitioner in the Supreme Court of the State of New Hampshire. New Hampshire Bar Counsel has made serious allegations involving theft against the petitioner, Peter Paul Mitrano (hereinafter sometimes referred to as "Mitrano") an attorney admitted to the bar of the State of New Hampshire and others courts.

The Supreme Court of the State of New Hampshire issued an interim suspension of Mitrano's license to practice law in the State of New Hampshire, predicated not upon a hearing of witnesses and facts before the Supreme Court of the State of New Hampshire, but, predicated upon mere allegations in the form of a recommendation of a hearing committee made against Mitrano by the District of Columbia.

Despite the objections of Mitrano, the Supreme Court of the State of New Hampshire took away Mitrano's license to practice law without the presentation of any witnesses. Stated in other words, the interim suspension issued by the Supreme Court of the State of New Hampshire was not based upon the testimony of any witnesses despite Mitrano's then previously written request that his "due process rights under the Constitution of the United States be protected by requiring that petitioner Mitrano have the right to confront any witnesses that are presented including but not limited to the right to cross-examine any witnesses".

Reasons for Granting the Writ

1. Did the Supreme Court of the State of New Hampshire suspend the law license of petitioner without adequate due process?

The Supreme Court of the State of New Hampshire predicated its interim suspension order on a disciplinary matter that has been ongoing for over six years in the District of Columbia. Note that there has not yet been any judgment or finding related to a disciplinary matter involving Mitrano by a court in the District of Columbia. Also note that in *Sitcov* v. *District of Columbia Bar*, 885 A.2d 289, 296-207 n. 10 (D.C. 2005), the court reiterated that:

> ". . . The BPR [Board on Professional Responsibility] does not make *decisions* regarding ethical violations; on the contrary, it makes *recommendations* to the court with respect to proposed discipline. Only the court has the authority to discipline attorneys . . . ." (Citation omitted.) (Italic emphasis in quoted text.)

The Supreme Court of the State of New Hampshire relied in part upon the following legal reasoning in issuing the interim suspension of Mitrano:

> ". . . I believe that the fiscal and administrative burdens involved

> in hearing live witness testimony outweigh the probative value, if any, of live witness testimony. The only question before the referee is whether the findings in the District of Columbia disciplinary proceedings warrant an interim suspension, **not whether those findings are legally and factually correct** . . . ." (Citation omitted.) (Bold emphasis added.) (Page 3 of the New Hampshire Referee's Findings and Recommendations dated May 23, 2007)

"[T]he prospect of additional administrative inconvenience has not been thought to justify invasion of fundamental constitutional rights." *Carey* v. *Population Services Intern.*, 431 U.S. 678, 691 (1977). "Numerous other opinions have held that individual interests, including the right to welfare payments, 'clearly outweigh' government interests in promoting 'administrative efficiency'". *Nixon* v. *Administrator of General Services*, 433 U.S. 425, 528 n. 23 (1977). Moreover, "temporary deprivation of wages may 'drive a wage-earning family to the wall'". *C.I.R.* v. *Shapiro*, 424 U.S. 614, 629 n.11 (1976).

This case is another legal lynching being conducted within the United States of America and arises from District of Columbia Bar Counsel falsely accusing Mitrano of forging the signature of Mr. Michael J. Byorick on the back of a check. When the testimony of a certified forensic document examiner, Mr. Ronald N. Morris,

destroyed District of Columbia Bar Counsel's forgery case, District of Columbia Bar Counsel without due process and without any notice in the Specification of Charges, then changed her case without any prior notice, over numerous objections and requests for continuances and additional time by Mitrano, to the trumped-up allegation that Mr. Byorick, the executive vice president of Dano Resource Recovery, Inc. (Mitrano's client who did not file a bar complaint) was not authorized to indorse said check. A bar complaint (ghostwritten by Phillip C. Jones, Esquire) was filed in June 2001 by Frank E. Williams, III, President of Williams Industries, Inc., who did not appear as a witness at the District of Columbia hearing. Five years later, a hearing was held on June 5, 2006, the morning of June 6, 2006 and then rescheduled to the afternoon of June 8, 2006, commencing at 2:30 P.M. District of Columbia Bar Counsel completed its case in chief at approximately 5:00 P.M. on June 8, 2006. Thereafter, when Mitrano requested that the hearing be continued, the requests were denied. The District of Columbia hearing committee did not issue its report until February 9, 2007. The District of Columbia hearing committee misstated numerous facts in order to pigeon-hole Mitrano into certain of the alleged charges brought by District of Columbia Bar Counsel. Peter Paul Mitrano steadfastly maintains that he is not guilty of any charges.

By way of background, Mitrano was paid by his client Dano Resource Recovery, Inc. (hereinafter sometimes referred to as "Dano") for legal services that Mitrano provided for his client

Dano. In January 1998, the subject check which was from the District of Columbia government originally payable to Dano was indorsed by Michael Byorick, at least the executive vice president of Dano, payable to Peter Mitrano for legal services. Williams Industries, Inc. filed a bar complaint in June 2001 falsely stating Mitrano was its attorney. District of Columbia Bar Counsel later filed a Specification of Charges falsely accusing Mitrano of forgery. Mitrano then filed a complaint against District of Columbia Bar Counsel for falsely accusing Mitrano of forgery dated March 1, 2006:

> ". . . [P]aragraph numbered 14 on page 4 of the "Specification of Charges" signed by Assistant Bar Counsel Traci M. Tait and Bar Counsel Wallace E. Shipp, Jr. and filed with this Board on July 27, 2005 is completely lacking in truth . . . ."

Note on page 22 of the District of Columbia Report and Recommendation of Hearing Committee Nine dated February 9, 2007 which was relied upon by the Supreme Court of the State of New Hampshire, it states:

> ". . . We might even agree that in hindsight, and standing alone, one could conclude that **there was a lack of sufficient care exercised** before the very serious charge of forgery was leveled against a member of the Bar . . . ." (Bold emphasis added.)

At the hearing, the witnesses presented by District of Columbia Bar Counsel from Williams Industries, Inc. testified they had no knowledge of Mitrano committing forgery and that they did not provide District of Columbia Bar Counsel with any information that Mitrano committed forgery. The other two witnesses presented by District of Columbia Bar Counsel, Mr. Limoli and Ms. Spears, did not have personal knowledge of the underlying facts. Mr. Frank E. Williams, Jr. who was under a medication identified as Cymbalta for depression (Tr. 133 of June 5) and who is the father of Frank E. Williams, III (Tr. 81 of June 5) testified:

> "Q Let me just clarify the question. Did you provide any knowledge—do you have any knowledge or did your (sic) provide any knowledge to Bar Counsel that I basically committed forgery by signing the back of that check?
>
> A No." (Tr. 193 of June 5)

Philip C. Jones, Esquire testified that:

> "Q Going to page 4, paragraph 14, it states 'Respondent endorsed the check as follows,' Respondent being Peter Mitrano, 'paid to the order of Peter Mitrano, partial legal fees, illegible expenses, Dano Resource Recovery, Inc., Michael Byorick, President.' Did you provide any information to Bar

> Counsel that I endorsed the check in that manner?
>
> A No. No, I wouldn't have known.
>
> . . .
>
> Q So you provided no information or knowledge to Bar Counsel that I committed any sort of forgery in this case. Is that correct?
>
> A Correct." (Tr. 304-305 of June 5)

Daniel K. Maller, Esquire testified:

> "Q My question is, did you provide any information to Bar Counsel that Peter Mitrano committed any forgery in this matter?
>
> A No." (Tr. 359 of June 5)

Petitioner, Peter Paul Mitrano, states that there has not been any evidence that Mitrano has committed theft. Note the case of *Norwood* v. *Harrison*, 413 U.S. 455, 471 (1973) ("No presumptions flow from mere allegations; no one can be required, consistent with due process, to prove the absence of violation of law."). Also note that in *McMurchie* v. *Superior Court*, 26 Ariz. 52, 221 P. 549, 550-551 (1923), the court stated "The report of the preliminary investigation has, it is true, been submitted to the court . . . His suspension is not based upon any judgment or finding of the court, and is without trial or notice to the accused." Said case did not allow a suspension to be predicated upon mere

allegations. This is the situation in the instant matter, namely, that there have been various reports prepared; however, the District of Columbia courts have not imposed any discipline upon Mitrano. "An attorney has no less rights than any other party, and as such, his or her discipline must be based upon more than speculation." *Kentucky Bar Ass'n* v. *Craft*, 208 S.W.3d 245, 263 (2006). Moreover, the State of New Hampshire did not allow adequate time for Mitrano to respond to the referee's report dated in May 2007.

Mitrano has a constitutionally protected interest in his license to practice law. *Matter of Kenney*, 393 Mass. 431, 504 N.E.2d 652, 655 (1987). "We have frequently recognized the severity of depriving a person of the means of livelihood." *Cleveland Bd. of Educ.* v. *Loudermill*, 470 U.S. 532, 543 (1985). "He is accordingly entitled to procedural due process, which includes fair notice of the charges." *In re Ruffalo*, 390 U.S. 544, 550 (1908). "Once it is determined that due process applies, the question remains what process is due." *Morrissey* v. *Brewer*, 408 U.S. 471, 481 (1972). In, *Goldberg* v. *Kelly*, 397 U.S. 254, 269-270 (1970), this Supreme Court stated:

> "In almost every setting where important decisions turn on questions of fact, due process requires an opportunity to confront and cross-examine adverse witnesses. E.g., *ICC* v. *Louisville & N.R. Co.*, 227 U.S. 88, 93-94 (1913);

Willner v. *Committee on Character & Fitness*, 373 U.S. 96, 103-104 (1963). What we said in *Greene* v. *McElroy*, 360 U.S. 474, 496-497 (1959), is particularly pertinent here:

'Certain principles have remained relatively immutable in our jurisprudence. One of these is that where governmental action seriously injures an individual, and the reasonableness of the action depends on fact findings, the evidence used to prove the Government's case must be disclosed to the individual so that he has an opportunity to show that it is untrue. While this is important in the case of documentary evidence, it is even more important where the evidence consists of the testimony of individuals whose memory might be faulty or who, in fact, might be perjurers or persons motivated by malice, vindictiveness, intolerance, prejudice, or jealousy. We have formalized these protections in the requirements of confrontation and cross-examination. They have ancient roots. They find expression in the Sixth Amendment * * *. This Court has been zealous to protect these rights from erosion. It has spoken out not only in criminal cases, * * * but also in all types of cases where administrative * * * actions were under scrutiny.'

"Inherent in the concept of a due process hearing is the decisionmaker's obligation to inform himself about facts relevant to his decision and to learn the claimant's own version of those facts." *Heckler* v. *Campbell*, 461 U.S. 458, 471 n. 1 (1983). "The 'minimum requirements [of procedural due process] being a matter of federal law, they are not diminished by the fact that the State may have specified its own procedures that it may deem adequate for determining the preconditions to adverse official action.'" *Santosky* v. *Kramer*, 455 U.S. 745, 755 (1982).

2. Is the court rule that the Supreme Court of the State of New Hampshire utilized to suspend the law license of petitioner void for vagueness?

Mitrano contends that the above-quoted New Hampshire Supreme Court Rule 37(16)(f) is void for vagueness. The basis of the taking away of Mitrano's license to practice law in the State of New Hampshire was said Rule 37(16)(f).

See *Ashton* v. *Kentucky*, 384 U.S. 195, 200 (1966) ("Vague laws in any area suffer a constitutional infirmity"); *Chicago* v. *Morales*, 527 U.S. 41, 56 (1999) ("'It is established that a law fails to meet the requirements of the Due Process Clause if it is so vague and standardless that it leaves the public uncertain as to the conduct it prohibits'"); *Baggett* v. *Bullitt*, 377 U.S. 360, 367 (1964) ("The statute therefore fell within the compass of those decisions of the Court holding that a law forbidding or requiring conduct in terms so vague that men of common intelligence

must necessarily guess at its meaning and differ as to its application violates due process of law."); and, *Konigsberg* v. *State Bar*, 353 U.S. 252, 263 (1957) ("Such a vague qualification, which is easily adapted to fit personal views and predilections, can be a dangerous instrument for arbitrary and discriminatory denial of the right to practice law.").

Mitrano contends that New Hampshire Supreme Court Rule 37(16)(f) is void for vagueness and that the same was used by the Supreme Court of the State of New Hampshire as a vehicle to deny Mitrano due process. This Supreme Court is clearly able to make the determination whether or not said New Hampshire Supreme Court Rule 37(16)(f) is void for vagueness.

Note that Mitrano raised this issue before the Supreme Court of the State of New Hampshire and stated on page 52 of his Motion and/or Request for an Extension of Time; Motion and/or Request to Exceed any Page Limitations; and, in the Alternative, Solely as a Protective Measure, Response to Show Cause Order that "Peter Paul Mitrano further notes that the authority that the New Hampshire Disciplinary Counsel has presented for suspending Peter Paul Mitrano is void for vagueness and/or is also unconstitutionally vague, and is a violation of Peter Paul Mitrano's State and Federal Constitutional rights to due process".

3. Is it a violation of due process for the Supreme Court of the State of New Hampshire to violate the doctrine of judicial notice by relying upon the allegations of a hearing committee in the District of Columbia?

The doctrine of judicial notice does not allow the Supreme Court of the State of New Hampshire to rely upon the allegations and/or rulings from other tribunals for the truth of the matters stated therein and thereby deny petitioner his rights to due process. See *General Elec. Capital* v. *Lease Resolution*, 128 F.3d 1074, 1081, 1083 (7th Cir. 1997) that:

> "At first glance, it seems appropriate for the district judge to take judicial notice of a finding he previously made . . .
>
> . . .
>
> ". . . If a court takes judicial notice of a fact whose application is in dispute, the court removes these weapons from the parties and raises doubt as to whether the parties received a fair hearing.
>
> ". . . **A district court may not take judicial notice of fact where its application may be reasonably disputed because use of this evidentiary device in this manner 'would abrogate the fundamental requirement of due**

> **process.'"** (Citation omitted.) (Bold emphasis added.)

Also see *United States* v. *Jones*, 29 F.3d 1549, 1553 (11th Cir. 1994) wherein the court explained the doctrine of judicial notice:

> "Fed.R.Evid. 201(b) provides:
>
> A judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.
>
> "In order for a fact to be judicially noticed under Rule 201(b), indisputability is a prerequisite. 21 C. Wright & K. Graham, Federal Practice and Procedure: Evidence Sec. 5104 at 485 (1977 & Supp.1994). Since the effect of taking judicial notice under Rule 201 is to preclude a party from introducing contrary evidence and in effect, directing a verdict against him as to the fact noticed, the fact must be one that only an unreasonable person would insist on disputing. *Id.* If it were permissible for a court to take judicial notice of a fact merely because it has been found to be true

in some other action, the doctrine of collateral estoppel would be superfluous. *Id.* at 256-57 (footnote omitted). Moreover, to deprive a party of the right to go to the jury with his evidence where the fact was not indisputable would violate the constitutional guarantee of trial by jury. *Id.* at 485. Accord *United States v. Aluminum Co. of America*, 148 F.2d 416, 446 (2d Cir.1945) (L. Hand, J.).

"In *Liberty Mut. Ins. Co. v. Rotches Pork Packers, Inc.*, 969 F.2d 1384, 1388-89 (2d Cir.1992) (citations omitted), the Second Circuit concluded that the district court erred in granting summary judgment based on a finding of fact within a bankruptcy court order. It recognized that a 'court may take judicial notice of a document filed in another court 'not for the truth of the matters asserted in the other litigation, but rather to establish the fact of such litigation and related filings.' *Liberty Mut. Ins. Co.*, at 1388 (citation omitted). Accordingly, a court may take notice of another court's order only for the limited purpose of recognizing the 'judicial act' that the order represents or the subject matter of the litigation. See *United States v. Garland*, 991 F.2d

328, 332 (6th Cir.1993) (citation omitted); *Colonial Leasing Co. v. Logistics Control Group Int'l*, 762 F.2d 454, 459 (5th Cir.1985); *St. Louis Baptist Temple, Inc. v. Federal Deposit Ins. Corp.*, 605 F.2d 1169, 1172-73 (10th Cir.1979). See also *ITT Rayonier, Inc. v. United States*, 651 F.2d 343, 345 n. 2 (5th Cir.1981) (court took notice of settlement in related proceeding rendering case at bar moot); *Moore v. Estelle*, 526 F.2d 690, 694, 696 (5th Cir.1976), cert. denied, 426 U.S. 953, 96 S.Ct. 3180, 49 L.Ed.2d 1192 (1976) (court took notice of prior habeas judgment to identify issues already decided); *FDIC v. O'Flahaven, 857 F.Supp.* 154, 157-58 (D.N.H.1994) (citations omitted) (court could not judicially notice veracity of allegations in affidavits from state court case; rather it could only take notice that the affidavits were filed and the averments were made)."

Also note that the Advisory Committee Notes to Rule 201 of the Federal rules of Evidence commented that:

". . . As Professor Davis says:

'My opinion is that judge-made law would stop growing if judges, in thinking about questions of law and

> policy, were forbidden to take into account the facts they believe, as distinguished from facts which are 'clearly * * * within the domain of the indisputable.' Facts most needed in thinking about difficult problems of law and policy have a way of being outside the domain of the clearly indisputable.' A System of Judicial Notice Based on Fairness and Convenience, supra, at 82."

Also see *Wyatt* v. *Terhune*, 315 F.3d 1108, 1114 (9th Cir. 2003), cert. denied *Alameida* v. *Wyatt*, 124 S.Ct 50 (2003) wherein the court stated in part that:

> "Represented by counsel in this appeal, Wyatt contends that the magistrate judge's use of the *Toyebo* findings constituted an improper procedural shortcut and that judicial notice was improper under Rule 201 of the Federal Rules of Evidence. Although we appreciate that the magistrate judge was attempting to utilize an expeditious procedure, we have held that taking judicial notice of findings of fact from another case exceeds the limits of Rule 201. *See M/v Am. Queen v. San Diego Marine Constr. Corp.*, 708 F.2d 1483, 1491 (9th Cir.1983) (stating general rule that 'a court may not take judicial notice of proceedings or records in

> another cause so as to supply, without formal introduction of evidence, facts essential to support a contention in a cause then before it).[5]
>
> "[Footnote] 5 Factual findings in one case ordinarily are not admissible for their truth in another case through judicial notice. See 21 Charles Alan Wright & Kenneth A. Graham, Jr., Federal Practice & Procedure § 5106 (Supp.2001) (stating 'courts should distinguish between taking judicial notice of the truth of some extrajudicial fact recited in a court record and the use of those facts for some purpose that does not depend on the truth of the facts recited'). In agreement with M/V Am. Queen, other circuits have held that a court may not take judicial notice of findings of fact from a different case for their truth . . . ." (Citations omitted.)

Thus, the Supreme Court of the State of New Hampshire further violated Mitrano's right to due process by taking judicial notice of facts stated in other court and/or District of Columbia board proceedings. The District of Columbia Board and the District of Columbia hearing committee also do not have the authority to take judicial notice of facts stated in other court and/or board proceedings. As stated above in the above-quoted case law, petitioner Mitrano's constitutional rights to due process were violated

by the reliance upon facts from other orders and/or decisions in the rulings of the Supreme Court of the State of New Hampshire in this matter.

Note that Mitrano raised this issue before the Supreme Court of the State of New Hampshire on pages 13 and 14 of his Motion and/or Request for an Extension of Time; Motion and/or Request to Exceed any Page Limitations; and, in the Alternative, Solely as a Protective Measure, Response to Show Cause Order and also at the hearing on May 16, 2007 in the Courthouse of the Supreme Court of the State of New Hampshire.

4. Do the actions and inactions of the State of New Hampshire and the District of Columbia related to this matter justify a revolution?

Note that on April 19, 1775, over 232 years ago, our forefathers began a revolution against the King of Great Britain in order to protect the rights and liberties of the present citizens of the United States of America. With all due respect to this Supreme Court of the United States, have we now come full circle wherein the revolution fought so bravely by our forefathers was for naught in that we are now exposed to the tyranny that our forefathers gave up their lives to stop? Petitioner, Peter Paul Mitrano, respectfully and humbly requests that this Supreme Court of the United States rule whether the actions and inactions State of New Hampshire and the District of Columbia justify another revolution. See *In re Anastaplo*, 366 U.S. 82, 112 (1961) ("the men who

founded this country and wrote our Bill of Rights were strangers neither to a belief in the 'right of revolution' nor to the urgency of the need to be free from the control of government") (dissent); *American Communications Ass'n, C.I.O.* v. *Douds*, 339 U.S. 382, 439 (1950) ("we cannot ignore the fact that our own Government originated in revolution and is legitimate only if overthrow by force may sometimes be justified") (dissent).

In the instant action, the State of New Hampshire has taken away petitioner's right to work as a lawyer. Mitrano contends that he has been subjected to the tyranny of the State of New Hampshire for too long. Mitrano has consistently been denied justice in the courts in the State of New Hampshire.

Conclusion

For these reasons, a writ of certiorari should issue to review the judgment of the Supreme Court of the State of New Hampshire.

Respectfully submitted,

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Petitioner

Dated: October 9, 2007.

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1. The petitioner, Peter Paul Mitrano, is a member of the Bar of this Court and other courts.

APPENDIX

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

ORDER

LD-2007-0002, In the Matter of Peter Paul Mitrano

On February 26, 2007, the Attorney Discipline Office filed a petition for immediate suspension of Attorney Peter Paul Mitrano from the practice of law and for other relief. In the petition, the Attorney Discipline Office requested, inter alia, that Attorney Mitrano immediately be suspended from the practice of law in New Hampshire on an interim basis pending the final resolution of disciplinary proceedings by the District of Columbia Court of Appeals.

On February 28, 2007, the court issued an order requiring the petition be served upon Attorney Mitrano and requiring him to show cause why he should not be immediately suspended from the practice of law in New Hampshire. On March 12, 2007, Attorney Mitrano filed a response to the petition. The court then appointed the Honorable George L. Manias to serve as a referee to hold a hearing to determine whether Attorney Mitrano should be suspended on an interim basis in accordance with Rule 37(16)(f), pending the final resolution by the District of Columbia Court of Appeals.

After a hearing on May 16, 2007, Judge Manias filed a report of his findings and recommendations. Based on the findings of a

hearing committee of District of Columbia Court of Appeals Board on Professional Responsibility, Judge Manias found that "interim suspension is necessary not only to preserve the integrity of the legal profession, but also to protect the public." He noted that the hearing committee found that Attorney Mitrano engaged in conduct that poses a serious threat of injury to his present and future clients, and that it found, by clear and convincing evidence, that Attorney Mitrano "misappropriated and stole money from others."

On May 24, 2007, an order was issued sending the referee's report to Attorney Mitrano and giving him until June 4, 2007 to show cause why the referee's findings and recommendations should not be accepted. On June 4, 2007, Attorney Mitrano filed a motion requesting a forty-five day extension to file a response to the order; he did not file a substantive response to the referee's report.

The motion for an extension is denied. After reviewing the petition for immediate suspension and the referee's report, the court finds that Attorney Mitrano's interim suspension is necessary to protect the public and to preserve the integrity of the legal profession. See Rule 37(16)(f). Accordingly, it is hereby ordered that:

(1) In accordance with Rule 37(16)(f), Peter Paul Mitrano is immediately suspended from the practice of law in New Hampshire pending final resolution of disciplinary proceedings by the District of Columbia Court of Appeals and further order of this court;

(2) Attorney Mitrano is enjoined from transferring, assigning, hypothecating, or in any manner disposing of or conveying any assets of clients, whether real, personal, beneficial or mixed: (sic) and

(3) Copies of this order shall be served on Attorney Mitrano by first class mail and certified mail, return receipt requested.

Broderick, C.J., and Dalianis, Duggan Galway, and Hicks JJ., concurred.

DATE: June 7, 2007

ATTEST:

/s/

Eileen Fox, Clerk

Distribution:
Honorable George Manias
James L. Dehart, Esquire
Landya B. McCafferty, Esquire
Mr. Peter P. Mitrano, Esquire
Debbie Bills, Supreme Court
NH Bar Association
File

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

O R D E R

In Case No. LD-2007-0002, In the Matter of Peter Paul Mitrano, the court on July 11, 2007, issued the following order:

Respondent's motion and/or request for reconsideration of this court's order dated June 7, 2007, is denied.

Broderick, C.J., and Dalianis, Duggan Galway, and Hicks JJ., concurred.

Eileen Fox
Clerk

Distribution:
Honorable George Manias
James L. Dehart, Esquire
Landya B. McCafferty, Esquire
Mr. Peter P. Mitrano
Donna Craig, Supreme Court
File

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Supreme Court, U.S.
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07-753 OCT 9 - 2007
OFFICE OF THE CLERK

No. _____

IN THE

Supreme Court of the United States

October Term, 2007

PETER PAUL MITRANO,

Petitioner,

versus

SUPREME COURT OF THE STATE OF NEW HAMPSHIRE,

Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of the State of New Hampshire

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SUPPLEMENTAL APPENDIX

Peter Paul Mitrano
Pro se
4912 Oakcrest Drive
Fairfax, Virginia 22030

Petitioner

December 2007

The State of New Hampshire

Supreme Court

Docket No. LD-2007-0002

In the Matter of Peter Paul Mitrano
Referee's Findings and Recommendations

On February 26, 2007, the Attorney Discipline Office (ADO) of the Supreme Court Committee on Professional Conduct filed a petition to impose an immediate interim suspension of the respondent, Peter Paul Mitrano, from the practice of law in New Hampshire. See Sup. Ct. R. 37(16)(f). In the petition, the ADO alleged that an interim suspension was necessary for the protection of the public and to preserve the integrity of the legal profession.

By order dated February 28, 2007, the Court ordered that the petition be served upon the respondent and that he show cause, on or before March 12, 2007, why he should not be suspended immediately from the practice of law in New Hampshire pending the final resolution of disciplinary proceedings by the District of Columbia Court of Appeals.

On March 12, 2007, the respondent responded to the show cause order and asked for additional time to submit a further response. The Court granted this request and ordered the respondent to file any further response to the show cause order by April 18, 2007. No further response was filed.

On March 19, 2007, the Court appointed the undersigned as referee for a hearing to determine whether, in accordance with Supreme Court Rule

37(16)(f), the respondent should be suspended on an interim basis pending the final resolution of disciplinary proceedings by the District of Columbia Court of Appeals.

The referee held a hearing on May 16, 2007, at which the respondent appeared pro se and the ADO appeared through its disciplinary counsel, Landya B. McCafferty. A record was made of the proceedings. All exhibits offered were accepted.

Before addressing the merits of the ADO's petition, the referee addresses the respondent's motion to dismiss it as untimely under Supreme Court Rule 37-A(I)(i). Supreme Court Rule 37-A(I)(i) sets forth the period of limitation for formal proceedings. Under this rule, formal proceedings shall not be commenced unless a grievance or complaint has been brought within six years after the commission of the alleged misconduct when the alleged misconduct occurred before April 1, 2000. Sup. Ct. R. 37-A(I)(i)(1). The respondent contends that because the misconduct at issue in the District of Columbia proceedings occurred more than six years ago, the ADO's petition for an interim suspension is untimely.

I believe that the respondent's reliance upon Supreme Court Rule 37-A(I)(i) is misplaced. This rule pertains only to formal proceedings that commence after issuance of a charge by disciplinary counsel. The ADO's petition in this case was not brought pursuant to formal proceedings as that term is used in Supreme Court Rule 37-A. Accordingly, I hereby deny the respondent's motion to dismiss the ADO's petition as untimely.

The referee also addresses the respondent's motion in limine in which he argues that his due process

rights will be violated unless the parties produce live witness testimony, instead of proceeding by offers of proof. Because the respondent's motion cites only to the Federal Constitution, I consider his argument solely under that constitution. See DeBenedetto v. CLD Consulting Eng'rs, 153 N.H. 793, 806 (2006).

"The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner." Mathews v. Eldridge, 424 U.S. 319, 333 (1976) (quotation omitted). Due process generally requires considering the following factors:

> First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probative value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that additional or substitute procedural requirements would entail.

Id. at 335.

"[T]he respondent's interest in his license to practice law is without a doubt an important interest that ought not be interrupted without substantial justification." Reiner's Case, 152 N.H. 163, 166 (2005) (Reiner I) (quotation omitted); FDIC v. Mallen, 486 U.S. 230, 243 (1988). I believe, however, that the procedure in this case provides adequate safeguards against an erroneous deprivation of this interest.

The respondent, unlike the respondent in Reiner I, has been afforded an opportunity to be heard pre-deprivation. While, arguably, the court could have, as it did in Reiner I, suspend the respondent immediately

and afford him a post-deprivation hearing, the court in this case has provided a pre-deprivation hearing. See Reiner I, 152 N.H. at 166-67.

Further, an independent body has already found, by clear and convincing evidence, following a full evidentiary hearing, that the respondent has engaged in professional misconduct involving misappropriation of clients funds and dishonesty. This finding demonstrates that any suspension that may be ordered as a result of the instant proceeding would not be arbitrary or baseless. Mallen, 486 U.S. at 244-45.

Finally, "[t]here is no inexorable requirement that oral testimony must be heard in every . . . proceeding in which it is tendered." Id. at 247-48. Under the circumstances of this case, I believe that the fiscal and administrative burdens involved in hearing live witness testimony outweigh the probative value, if any, of live witness testimony. The only question before the referee is whether the findings in the District of Columbia disciplinary proceedings warrant an interim suspension, not whether those findings are legally and factually correct. See Reiner I, 152 N.H. at 169. The proposed live witness testimony would be, at best, only marginally relevant to this task. Additionally, the referee has accepted as an exhibit the entire transcript of the District of Columbia disciplinary proceedings. The proposed testimony would therefore be cumulative and repetitive. Under these circumstances, I believe that proceeding by offers of proof does not violate the respondent's due process rights. See In re Grand Jury Proceeding, 13 F.3d 459, 461 (1st Cir. 1994). As in Reiner I, the government's interest in protecting the public and preserving the integrity of the legal system militates against prolonging this proceeding so as to

permit live witness testimony. See Reiner I, 152 N.H. at 166.

For all of the above reasons, therefore, I hereby deny the respondent's motion in limine.

The referee now makes the following findings and recommendations:

I. Facts

On February 9, 2007, Hearing Committee Number Nine (Hearing Committee) of the District of Columbia Court of Appeals Board on Professional Responsibility issued a report recommending that the respondent be disbarred from the practice of law in the District of Columbia.

The Hearing Committee found, by clear and convincing evidence, that the respondent violated the following District of Columbia Rules of Professional Misconduct:

(1) Rule 8.4(b), which declares that it is professional misconduct to commit a criminal act that reflects adversely on the lawyer's honestly, trustworthiness, or fitness as a lawyer;

(2) Rule 8.4(c), which provides it is professional misconduct for a lawyer to engage in conduct involving dishonestly, fraud, deceit, or misrepresentation;

(3) Rule 1.15(a), which requires an attorney to hold funds belonging to clients or third parties in a separate account;

(4) Rule 1.15(b), which requires an attorney, upon receiving funds in which a client or third person has an interest, to notify the client or third person and to deliver promptly to the client or third person any funds that the client or third person is entitled to receive;

(5) Rule 1.15(c), which provides that if the lawyer is in possession of property in which interests are claimed by

the lawyer and another person or persons, the lawyer must keep the property separate and if a disputes arises concerning the respective interest, the undisputed portion must be distributed and any disputed portion kept separate until the dispute is resolved;
(6) Rule 1.17(a), which requires an attorney to deposit funds coming into his or her possession that are required to be kept separate into one or more specially designed accounts; and
(7) Rule 1.4(a), which provides that an attorney must keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

The Hearing Committee found that the respondent violated these rules when he "wrongfully took from others with an interest all the proceeds of the [client's] check, which amount to $241,336.59," with the intent "to deprive those others of their right to that property" and when he "refused to disclose to parties with an interest in the check . . . that he had received the check . . . and spent virtually all of the proceeds within two months of receiving them." The Hearing Committee found that there "really was no evidence" that the respondent was entitled to the entire proceeds of the check, or that he retained the amounts in excess of his claim to attorney's fees only temporarily. The bank account into which the respondent deposited the check was his personal account with Fleet National Bank (now Bank of America) in Hanover, New Hampshire.

The Hearing Committee recommended disbarment, explaining that disbarment was proper because the respondent misappropriated funds belonging to another and that he did so intentionally.

Although the respondent has argued at length that the Hearing Committee's report is legally and factually erroneous, I have not reached this issue. The purpose of this proceeding was not to determine whether the Hearing Committee's report was correct, but whether, considering the findings and rulings contained therein, "suspension is necessary for the protection of the public and the preservation of the integrity of the legal profession." Reiner I, 152 N.H. at 169.

II. Necessity of Interim Suspension

The Court has previously addressed imposing the sanction of interim suspension in the context of Supreme Court Rule 37(9)(i), which pertains to attorneys who have been indicted or bound over for a felony. In this context, the Court has ruled that it "may impose an interim suspension . . . when it is deemed necessary for the protection of the public and the preservation of the integrity of the legal profession." Reiner I, 152 N.H. at 168; see also Sup. Ct. R. 37(16)(f) (court may suspend attorneys upon such terms and conditions as it deems necessary to protect public and preserve integrity of legal profession). In the context of a criminal indictment, the Court has ruled that the allegations contained within such an indictment may meet both prongs of this test (protecting the public and preserving the integrity of the legal profession) where the attorney's actions "directly threaten his clients." Reiner's Case, 152 N.H. 594, 598 (2005) (Reiner II). In Reiner II, the Court observed that allegations that an attorney "misused clients' funds" could be sufficient to establish that interim suspension is necessary to protect the public. Id

Based upon my review of the evidence presented at the hearing, I believe that interim suspension is necessary in this case to both preserve the integrity of the legal profession and protect the public. The Hearing Committee has found that the respondent engaged in conduct that poses a serious threat of injury to his present and future clients. Although the respondent has not been charged with a crime, the Hearing Committee found, by clear and convincing evidence, that the respondent misappropriated and stole money from others. Unlike the allegations in Rein II, I believe that the Hearing Committee's findings establish that interim suspension is necessary not only to preserve the integrity of the legal profession, but also to protect the public.

The respondent contends that because he has not been indicted criminally for his conduct and because the District of Columbia Court of Appeals has not yet imposed discipline upon him, the court lacks the authority to suspend him based solely upon the Hearing Committee's report. To the contrary, the Court "has the inherent power to take reasonable and expeditious action in the suspension or removal of members of the bar for the protection of the community." Barnard's Case, 101 N.H. 33, 34 (1957).

The referee therefore recommends that the court grant the prayers for relief A-D and F contained in the ADO's February 26, 2007 petition.

DATE: May 23, 2007

/s/

Hon. George L. Manias, Referee